

## Remarks

Claims 1-8 and 26-27 stand rejected under 35 USC §102, and Claims 9-11, 13-15 and 18-25 stand rejected under 35 USC 103(a). Claim 18 has been amended. Applicants assert that the currently pending claims are now in condition for allowance for at least the reasons set forth more fully below.

## 102 Rejections

Claims 1-8 and 26-27 stand rejected under 35 § 102(e) as being anticipated by Alperovich et al (US Pat. 6,298,247). Applicants respectfully traverse the rejections. The Office Action rejects independent claim 26 by stating the Alperovich teaches all of its elements. The Office Action goes on to equate the volume controls (**VC1 and VC2**) with the two different options for controlling the speaker volume based on ambient noise recited in claim 26.

Independent claim 26 recites a method of controlling a speaker volume of a communications device that includes, in part, providing to a user of the communications device at least two different options for controlling the speaker volume based on ambient noise, receiving a selection of one of the at least two different options from the user and implementing a volume control action that is based on the ambient noise and that corresponds to the option selected by the user to thereby control the speaker volume based on the ambient noise. The recited claim explicitly provides the user at least two different options for controlling the speaker volume and implements a volume control action that corresponds to the option selected by the user. These recitations are contrary to the teachings of Alperovich.

Alperovich teaches the use of two volume controls that *always work together*. In Alperovich volume control VC1 performs a selected filter gain and VC2 performs a bandpass or band reject filter on both the primary and secondary audio signals. (FIG. 3, 402, 404). During the listening mode the primary audio is the incoming audio signal (Col 3, l. 29-35). Alternatively, in the speaking mode, the primary signal becomes the user's voice. (Col 3, l. 58-65). In either mode *both volume controls work together*. (Col. 3, l. 29- Col. 4, l. 9). It is apparent from Fig. 4 that VC1 and VC2 are always working together in that the primary audio is always input to VC1 and not to VC2 while the output

to the talk amplifier always comes from VC2 and not from VC1. Moreover, Alperovich does not teach a secondary audio input that is ambient noise but only states that ambient noise is included in the input to VC1 which is always in use to filter the noise. Thus, Alperovich is not concerned with providing to at least two different options for controlling the speaker volume based on ambient noise and implementing a volume control action that is based on the ambient noise and that corresponds to the option selected by the user as set forth in claim 26. Accordingly, claim 26 recites elements not taught or disclosed in Alperovich and is therefore allowable over Alperovich for at least these reasons. Dependent claims 27 and 1-10 depend from an allowable claim 26 and are also allowable for at least the same reasons.

### 103 Rejections

Claim 9 stands rejected under 35 USC 103(a) as being unpatentable over Alperovich (US Pat 6,298,247) in view of Higuchi (US Pat. 6,363,344). Claims 10, 11 and 13-15 stand rejected as being unpatentable over Alperovich in view of Kanai (US Pat 6,233,462). Additionally, claims 18-25 were rejected as being unpatentable over Alperovich in view of well known prior art citing The Duplan Corporation v. Deering Miliken (197 USPQ 342). Applicants respectfully traverse these rejections to the extent they apply to the current set of pending claims.

### Claim 9

Claim 9 depends from an allowable base claim and is also allowable for at least the same reasons. In particular, claim 9 is allowable over the combination of Alperovich and Higuchi because, as discussed above, Alperovich fails to disclose all of the claim recitations including providing to at least two different options for controlling the speaker volume based on ambient noise and implementing a volume control action that is based on the ambient noise and that corresponds to the option selected by the user and because Higuchi also fails to disclose these same recitations.

### Claims 10, 11 and 13-15

The Office Action rejects Claims 10, 11 and 13-15 by stating that Alperovich teaches all of the claimed elements with the exception of resetting speaker volume to an initial setting which the Office Action states is taught by Kanai.

Claim 11 recites a method of compensating the volume of a speaker of a communications device in response to ambient noise including, among other things, selecting an initial volume level for the speaker in the presence of substantially zero ambient noise and resetting the volume to the initial volume level upon a call ending and before the establishment of a subsequent call.

Thus, each new call will begin with the speaker volume set to the initial volume level that is set for the presence of substantially zero ambient noise, which prevents the speaker volume from being set to an uncomfortably high level at the beginning of a call.

The office action seems to equate the phrase “processing goes back to the standby status” in Kanai (Col. 7, l. 43-44) to the phrase “resetting the volume to the initial volume level” of claim 11. Kanai (Col. 7, l. 34-44) merely teaches that the processing control logic of FIG. 5 goes back to step S101. Kanai does not teach that the volume control is actually returned to some initial level. It appears that the volume control level remains unchanged from step S107/S114 until the volume is proactively modified in steps S106/S113 sometime after “processing goes back to the standby status” at S101. This has been previously argued in response to previous Office Actions yet the current Office Action repeats the same rejection while providing no explanation as to why such reasoning by the Applicant is incorrect. Therefore, neither of the cited references nor their combination suggests this feature of resetting the volume to the initial level once the call has ended and prior to the next call being established.

Similarly, in relation to claim 10, which recites that the volume is reset to an initial volume, it is evident from FIG. 5 that the process proceeds from the call ending at S107/S114 back to sampling ambient noise at S102 for the next call prior to readjusting the volume level at S106/S113. Thus, there is the potential for the volume to be improperly set for the immediate beginning of the next call.

Since the combination of Alperovich and Kanai do not teach all the elements of the claims, claims 10 and 11 are allowable over Alperovich in view of Kanai. Dependent

claims 13 and 15 depend from allowable independent claim 11 and are also allowable for the same reasons.

If the position is maintained that the features recited in claims 10, 11, 13, and 15 are shown by the cited documents, Applicants respectfully request that it be specifically pointed out where in the documents these features are disclosed or that an explanation be provided as to why the features recited in these claims would be necessarily inherent in the cited documents.

#### Claims 18-25

The Office Action rejects Claims 18-25 by stating that although Alperovich fails to teach the determination of a volume level greater than the threshold and providing a means for receiving user input to activate and deactivate the means for adjusting, other than powering the device on and off, such teachings are well known in the art. The Office Action further stated that under Duplane v. Deering there is no invention in providing a means to alternate between one unpatentable configuration and another unpatentable configuration where there is no new or different function.

Amended claim 18 recites, among other things, means for providing at least two user selectable options for adjusting a speaker volume level based on ambient noise, at least one of the options, chosen by the user, for adjusting the speaker volume level from an initial volume level in response to ambient noise is operable to sample the ambient noise, determine whether the sampled ambient noise is greater than a threshold level of ambient noise, and automatically causes the volume of the speaker to increase to a level sufficient to overcome the sampled ambient noise, means for resetting the speaker volume level to the initial volume level upon the call ending and before the establishment of a subsequent call and means for receiving user input to activate and deactivate the means for adjusting independently of powering on and off the mobile communications device.

The Office Action concedes on page 8 that Alperovich does not teach the cited recitation. Accordingly, the user of the devices disclosed by Alperovich cannot turn the volume control on and off during idle times between calls and during in progress calls. However, it is also true that Alperovich offers no implied teaching, suggestion or

motivation to provide such an activation/deactivation feature or to provide an alternative volume control method. A reference must provide an explicit or implicit suggestion, teaching or motivation in order to be §103 prior art. *SIBIA Neurosciences, Inc. v. Cadus Pharm. Corp.*, 225 F.3d 1349, 55 U.S.P.Q.2D (BNA) 1927 (Fed. Cir. 2000)(Suggestion or motivation to modify a single reference required for obviousness rejection).

Furthermore, claim 18 has been amended to include additional subject matter not taught in the cited references in order to expedite prosecution. For example, claim 18 has been amended to recite a mobile communications device that includes, in part, means for resetting the volume to the initial volume level upon the call ending and before the establishment of a subsequent call and means for providing to a user of the communications device at least two different options for controlling the speaker volume based on ambient noise. These features are not disclosed by the cited references, as discussed above in relation to claims 26 and 11.

Therefore, Alperovich does not teach all the elements of the claim 18 and claim 18 is allowable over Alperovich in view of Duplan at least since there is new and different function. Dependent claims 19-25 depend from an allowable claim 18 and are also allowable for at least the same reasons.

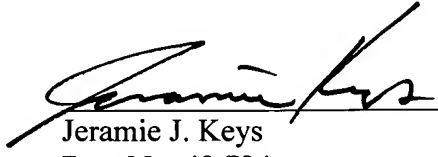
### Conclusion

Applicants assert that the application including claims 1-11, 13-15 and 18-27 is in condition for allowance. Applicants request reconsideration in view of the amendments and remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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